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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 OSEN LLC,

4 Plaintiff,

5 v.

18 CV 6070 (JSR)

6 UNITED STATES DEPARTMENT OF  
7 STATE,

8 Defendant.

-----x

9 New York, N.Y.  
10 December 17, 2018  
3:14 p.m.

11 Before:

12 HON. JED S. RAKOFF

13 District Judge

14 APPEARANCES

15 OSEN LLP

Attorneys for Plaintiff

16 BY: MICHAEL J. RADINE

WILLIAM FRIEDMAN

17 GEOFFREY S. BERMAN

18 United States Attorney for the

Southern District of New York

19 Civil Division

PETER ARONOFF

20 Assistant United States Attorney

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1 (Case called)

2 MR. RADINE: Michael Radine for plaintiff.

3 MR. FRIEDMAN: William Friedman for plaintiff Osen  
4 LLC. Good afternoon, your Honor.

5 MR. ARONOFF: Peter Aronoff U.S. Attorney's Office of  
6 the Southern District of New York.

7 THE COURT: So we're here on the oral argument on  
8 crossmotions for summary judgment. So there is no magic in who  
9 goes first but let me hear from plaintiffs first.

10 MR. RADINE: Sure. Thank you, your Honor.

11 As we see it, there are two issues here going to  
12 whether there's contrary evidence to the State Department's  
13 grounds for withholding its information. There is whether  
14 State has specifically identified what harms will flow from  
15 disclosing information that's already available publicly and  
16 whether State has specifically identified harms flowing from  
17 what it's withheld versus what other official disclosures are  
18 out there from State itself from other agencies.

19 In both these cases State's argument largely relies on  
20 case law involving either the CIA or in light of the CIA on  
21 issues about intelligence sources and methods, which is a  
22 ground for withholding information under the executive order at  
23 issue here.

24 However, of course, State is not the CIA and there's  
25 only one cable at issue for which it uses the intelligence

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1 sources and methods ground for withholding. We dispute that as  
2 well but make the larger point that this case law is inapposite  
3 to the rest of the withholdings.

4 On the unofficial disclosure ground, here of course I  
5 mean WikiLeaks, as to those documents there's case law that  
6 says that the CIA intelligence sources and methods are so  
7 valuable and so important, they have such a capacity to  
8 embarrass a foreign nation that allowed a CIA operation, for  
9 instance, to occur on its soil that the remainder of doubt that  
10 a source might not be, the unofficially disclosed source, might  
11 not be genuine is worth keeping. It's not an issue here.

12 First of all, the materials from WikiLeaks don't  
13 present the same issues of doubt as they might in other cases.  
14 So, for instance, in the Second Circuit case Wilson v. CIA the  
15 issue was whether Ms. Wilson's letter from CIA HR about her  
16 employment dates. She had gotten that letter from the CIA and  
17 she disclosed it in breach of her own employment agreement.  
18 The Court said there's still some question of doubt as to  
19 whether the CIA's HR department correctly provided her dates of  
20 employment.

21 It's not an issue here. The question is not whether  
22 the information in the cables is accurate. The question is  
23 whether the WikiLeaks versions of the cables are accurate.

24 We provided authentication evidence that State has not  
25 countered. And in the years since the WikiLeaks disclosure has

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1 been made, there has not been, to our knowledge, or that State  
2 has raised, any evidence that they're inaccurate in any way.  
3 Presumably the government would like to discredit that  
4 disclosure. It has yet to happen.

5 On the official disclosure ground State relies on case  
6 law suggesting that --

7 THE COURT: If there had been no WikiLeaks disclosure,  
8 are you saying that they could not on other grounds withhold  
9 the remaining portions of these documents that are still in  
10 controversy.

11 MR. RADINE: If the WikiLeaks disclosure had never  
12 happened, they'd still have to confront official disclosures  
13 paid both by themselves, including in these cables and in -- by  
14 other agencies.

15 A couple of comments on that. Within these cables I  
16 would point to a few examples which really bring to question  
17 their ground that they can't disclose frank conversations with  
18 foreign officials. As we mention in our briefs, we think, as a  
19 general ground, protecting all conversations with foreign  
20 officials seems boundless and seems contrary to the FOIA  
21 purpose of disclosure. But if your Honor has it in front of  
22 him, I would turn to, for instance, Exhibit 19 from us which is  
23 the -- it's a cable, subject line: Iran Managing the  
24 Post-Basrah Backlash.

25 THE COURT: Hang on a minute.

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1 Go ahead.

2 MR. RADINE: So it's easier to read on the WikiLeaks  
3 version, which starts a few pages in. And what's clear in  
4 paragraphs 1 through 4 is a conversation that is happening  
5 between -- it's as near as I can tell a private conversation  
6 that's happening between State Department officials and Iraqi  
7 officials.

8 Paragraphs three and four are not redacted, even  
9 though it goes into detail about Iranian meddling in the  
10 national security of Iraq.

11 The next few paragraphs are redacted. They seem to  
12 touch on the same subjects. It's not clear why. There are  
13 names, it's true, of interlocutors after paragraphs three and  
14 four. But we'd submit those could just be redacted.

15 To the extent that the purpose behind FOIA is  
16 disclosing all segregable information, then redacting just  
17 those names would seem to solve their problem.

18 And even --

19 THE COURT: So what is the ultimate reason why you  
20 need these disclosures from the government? The normal FOIA  
21 rationale is simply to evaluate whether the government is  
22 working the way it's supposed to. And here you have the actual  
23 remainder of the documents but you say that's not good enough.  
24 You need more than just that information. You need an absolute  
25 in effect confirmation from the government that, yes, this was

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1 the document. And for what purpose?

2 MR. RADINE: Well, we use these documents in the civil  
3 suits that we bring on behalf of our clients. And although we  
4 believe that, for the same reasons provided in our briefs, the  
5 WikiLeaks versions are authenticatable, the stronger evidence  
6 will always be the evidence from State Department itself and it  
7 may carry more weight.

8 THE COURT: Has that come up in any of your cases?

9 MR. RADINE: We have so far attempted not to use this  
10 information. Fortunately, there is so much officially  
11 disclosed information about that time period that we haven't  
12 needed to. In the exhibits in our crossmotion we provided  
13 really a very small sample, four of the weekly summaries from  
14 the commander of MNF-I that's Multinational Forces Iraq, that  
15 was General David Petraeus, and then later Raymond Odierno to  
16 Secretary of Defense and other information that's been provided  
17 by Sencom.

18 I would note that that information from those agencies  
19 is not only on the same topic and covers the same material but  
20 that's from another agency that not only has responsibility for  
21 national security, but one of the figures who is frequently  
22 redacted is the MNF-I commander himself, but he's a Department  
23 of Defense employee. To the extent that Department of Defense  
24 understands what presents a national security issue, I think it  
25 should apply here as well. This is, as opposed to some of the

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1 cases that raise a question as to whether another agency can  
2 officially disclose information for a withholding agency, first  
3 of all, these are generally all CIA cases, as Judge McMahon's  
4 opinion in ACLU points out, but also those tend to be cases  
5 where the other agency doesn't have a national security role.  
6 So in Frugone v. CIA the CIA withholds information about  
7 Frugone's employment, same thing as in Wilson v. CIA, and the  
8 other agency disclosing it is the Office of Personnel  
9 Management. Naturally, the Office of Personnel Management  
10 doesn't have that role, a national security role.

11 In the case that gave us Glomar, the Glomar response,  
12 the CIA is withholding information as to the Glomar ship and  
13 the disclosing agency was the National Science Foundation.  
14 It's not at all similar to the situation here where State is  
15 withholding information that the Department of Defense is  
16 disclosing, including in some cases the same conversations. We  
17 have the example in the reply brief about Iran attempting to  
18 Lebanize Iraq. I would suspect that is literally the same  
19 conversation that was redacted from the State version of that  
20 cable.

21 So, in short, we have a hard time understanding the  
22 justifications. The State Department has attempted to take the  
23 CIA's justification, that sort of last shred of deniability  
24 that's so important when it comes to maintaining secrecy around  
25 a CIA operation and a foreign country, and extend that broadly

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1 to any conversation that a State Department official might have  
2 with a foreign official.

3 They don't cite a case for this proposition because  
4 it's too broad. It would essentially raise these  
5 conversations, some of which, I point out, are really not very  
6 extraordinary such as Prime Minister Maliki and Raymond  
7 Odierno, general U.S. forces complimenting each other and  
8 welcoming each other to a meeting, and raise that to the level  
9 that the CIA enjoys. It is cross-purposes to FOIA and  
10 unjustified by the case law.

11 With that, I think we'd take any questions from your  
12 Honor. But I think that our briefs cover our concern.

13 THE COURT: I'll put you on hold for now. Let me hear  
14 from your adversary. We'll come back to you very shortly.

15 MR. ARONOFF: Thank you, your Honor.

16 In large part I think that plaintiff's argument here  
17 just takes these documents at a level of generality that does  
18 not recognize the particular national security harms that the  
19 government has identified. The general issue with plaintiff's  
20 characterization of the documents -- and this is setting aside  
21 for the moment the question of whether the information that's  
22 withheld is the same as the information that's available on  
23 WikiLeaks, on that point I note that the State Department has  
24 in this case, and has since the WikiLeaks disclosures first  
25 began, always refused to authenticate or comment on any



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1 specific document. But even assuming for the sake of argument  
2 that the information that's withheld is the same, plaintiff  
3 appears to be saying that information about diplomacy for  
4 foreign affairs does not deserve protection in the same way  
5 that intelligence information deserves protection. That  
6 argument finds no basis in case law. It doesn't find any basis  
7 in the executive order governing classification. In fact,  
8 Executive Order 13526 Section 1.4 specifically lays out both  
9 foreign government information and information relevant to the  
10 conduct of foreign relations on an equal footing with  
11 intelligence sources or methods. So I see no basis to say  
12 categorically that the State Department's conduct of foreign  
13 affairs is somehow less important to national security than the  
14 defense department's role, a separate role in representing the  
15 United States abroad.

16 Plaintiff also claims, particularly in the reply  
17 brief, that somehow the CIA is different. This is another  
18 version of the same argument. And it is true that there's a  
19 lot of case law about the CIA and FOIA, but that's not -- when  
20 we're talking about Exemption One, it's not because the CIA  
21 enjoys some special status. As I mentioned, the executive  
22 order puts intelligence sources and methods on the same footing  
23 as other bases for classification.

24 Plaintiff's citations are about Exemption Three and  
25 it's true that the CIA does enjoy some particular applicability

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1 to protect certain kinds of information under Exemption Three  
2 but that's not relevant to this case.

3 THE COURT: So if we look at Exhibit 19 which was the  
4 one that your adversary pointed to. What exemption applies to  
5 the redacted portions that does not apply to the unredacted  
6 portions?

7 MR. ARONOFF: Well, the redacted portions of  
8 exemption -- sorry, of Exhibit 19 are withheld under Exemption  
9 One. They're classified -- broadly, that this document has  
10 classification both because it contains foreign government  
11 information, it would be in the margin, the government document  
12 1.4(b) referring to the executive order. At 1.4(d) that's  
13 information relevant to the conduct of foreign relations.

14 To get to your Honor's question, compared to the rest  
15 of the document the State Department did a line-by-line review  
16 of each of these documents when it received this FOIA request.  
17 The information that was released, in the State Department's  
18 view, releasing it would not cause any harm to national  
19 security and typically -- I mean we're speaking about a number  
20 of documents and each document is reasonably long, but  
21 typically the reason is that information still withheld at this  
22 point relates to particular conversations with foreign  
23 officials, usually high-ranking officials, about sensitive  
24 matters in Iraq. Many of these officials are still active in  
25 politics in Iraq today. And releasing them -- it's just like

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1 politics in the U.S. It's important to conduct certain kinds  
2 of activities in a sensitive and discrete way and if a  
3 behind-the-scenes look at exactly everything that a foreign  
4 official said to the United States and an American official's  
5 characterization or reaction to that specific conversation, if  
6 that came out, that would damage the United States' ability not  
7 only to deal with the specific individuals involved but also  
8 the United States is a repeat diplomatic player and on an  
9 ongoing basis if the United States is forced to give official  
10 accounts of all of its conversations that it holds with foreign  
11 officials across the world, it would make it impossible to  
12 conduct the sort of sensitive discussions that are necessary  
13 for diplomacy in foreign affairs.

14 THE COURT: Why wouldn't the concerns that you're  
15 raising with respect, again just focusing on these particular  
16 paragraphs of 19, be satisfied by just redacting the names of  
17 the people who are the sources?

18 MR. ARONOFF: As a general matter, this goes more to  
19 segregability than to classification. There's a few different  
20 reasons.

21 One reason is, particularly in the area of  
22 classification, courts have recognized that individual details,  
23 none of which are significant on their own, when taken together  
24 can rise to the level of a sensitive piece of information. And  
25 so having some details about a conversation, even if the

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1 speaker himself or herself is not identified or neither side is  
2 identified, it may still allow for an inference for who was  
3 speaking based on context and the context of the surrounding  
4 document.

5 It's also possible that it doesn't matter who was  
6 speaking, it just matters that someone high ranking in Iraqi  
7 government said this to someone at the U.S. Embassy or  
8 otherwise in American government.

9 These are general reasons but these are the sorts of  
10 reasons that the State Department considers.

11 And I would note also that the redactions here are  
12 really at the sentence-by-sentence level. The State Department  
13 was careful to enclose disclose exactly as much information as  
14 it could and still protect national security.

15 And I also note that a lot of information was  
16 classified specifically during the review for this very case.  
17 So it's not the case that the State Department simply kept the  
18 classified labels that were first put in place ten years ago or  
19 whenever these documents were created. There really was a  
20 line-by-line review of each sentence.

21 THE COURT: Let's go back, finally, to plaintiff's  
22 counsel.

23 MR. RADINE: A few comments on defendant's argument.  
24 The distinctions in Exhibit 19 that really provide a good  
25 example, because the argument that there are individual pieces

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1 of information that can be read in the aggregate is an argument  
2 that's -- I believe I've only seen, again, in the intelligence  
3 context. This is Larson v. State which says in the context of  
4 the CIA that even trivial pieces of information can be brought  
5 together by enemy intelligence services trying to work out the  
6 methods of the CIA. I haven't seen it used in this diplomatic  
7 context.

8 But more to the point, these propositions that there  
9 could be individual pieces or maybe it's not the name but you  
10 can figure out who it is, these are all points that have to be  
11 made in a declaration. They have to be made with enough  
12 specificity that the Court can review that and the opposing  
13 party can try to counter them. As a sort of post hoc  
14 explanation, it's not helpful.

15 As near as we can tell from the declaration, the  
16 ground for withholding cable after cable is a fact that it  
17 would reveal who the speaker was who, as I said, may be still  
18 in politics; although I'll note that's not always the case.  
19 And at least in the case of President Talabani he is not even  
20 alive. So I don't think that that works as a justification, at  
21 least as the way the declaration is spelled out.

22 Again withholding it as information is not the issue.  
23 The information is available on WikiLeaks. The question then  
24 is whether the official disclosure of that information has an  
25 additional threat to national security. And as the case law

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1 shows, that appears in the CIA context. It may appear for  
2 other agencies that enjoy that additional level the DIA, the  
3 NSA possibly. But it's not appeared in the context of simple  
4 diplomatic chatter. It's appeared in that sources and methods  
5 environment. Again, that's appeared, the sources and methods  
6 is at issue in one cable. We would dispute that as we laid out  
7 in our brief. But it's just there.

8 So, given the purpose of FOIA as a disclosure statute,  
9 even crediting the idea that some of these conversations have  
10 names that you're withholding, although they're not always  
11 withheld. Truly you can just jump to the very first exhibit to  
12 find a conversation here. There are some redactions. But you  
13 know who is in the conversation. It's literally in paragraph  
14 one, this document's subject line is: Charge's July 29 meeting  
15 with NSA Rubaie. That's Chargé D'Affaires Patricia obtained  
16 this meeting with Iraqi National Security Adviser Mowaffak  
17 al-Rubaie. It says in a July 29 introductory call, National  
18 Security Adviser Rubaie told Chargé Butenis -- it goes on from  
19 there. Parts of it are exempted. Parts of it are not. It's  
20 not something based on a declaration that we can follow and,  
21 therefore, it's not something we can easily respond to.

22 THE COURT: All right. I'll hear finally from the  
23 government.

24 MR. ARONOFF: Thank you, your Honor.

25 As an initial matter, the government submitted two

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1 unclassified declarations. Necessarily, when discussing  
2 classified information, an unclassified declaration must be  
3 circumspect.

4 THE COURT: That reminds me. Although I can pretty  
5 well tell what's been redacted and what hasn't, since there was  
6 some further disclosures after the initial documents were given  
7 the Court, it would be helpful to have in some form what those  
8 additional disclosures were so that I can evaluate exactly  
9 what's being still redacted and what isn't. So if maybe  
10 jointly you could figure out a nice way to -- worst case you  
11 can give me the new versions of what has been disclosed and I  
12 can compare them with the WikiLeaks documents. But I'm open to  
13 any other way you want to do it. I just want to be able to  
14 know for sure -- I don't want to spend time looking at  
15 something that turns out to have already been disclosed in the  
16 second round of disclosures.

17 MR. ARONOFF: Very well, your Honor.

18 I do note of course that the government is not  
19 confirming that the information in WikiLeaks versions --

20 THE COURT: Yes, of course. And that's an important  
21 part of your argument. I understand that. And I think -- this  
22 has been implicit in much of the briefing, is so someone hacks  
23 into secret materials. The government -- they then become  
24 public in some sense but, of course, the public is free to use  
25 them in that sense. The government then is sort of in the

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1 horns of a dilemma. They want to reveal there's been a leak or  
2 a hacking but they don't want to affirmatively sign off on what  
3 has been now made public. And that's why I asked the question  
4 earlier of plaintiff's counsel, What do you need this for? And  
5 what they tell me I think they need it for is hypothetical use  
6 in their parallel litigation but having haven't yet had to  
7 actually have a need for it. Now maybe I'm being unfair to  
8 plaintiff's counsel and I'll let them speak in a minute. But I  
9 don't know whether that's relevant to my analysis. This is  
10 FOIA. It's not a question of what their ultimate purpose is.  
11 But it sounds a little secondary to the original purposes of  
12 FOIA.

13 MR. ARONOFF: I agree with that argument, your Honor,  
14 although I acknowledge there's case law saying a particular  
15 purpose for which a document is to be put is not relevant.

16 I do want to touch on two points.

17 THE COURT: Go ahead.

18 MR. ARONOFF: The first point is the intelligence  
19 review that plaintiffs attach as Exhibit 29. I just want to be  
20 clear that neither this document nor the Chelsea Manning  
21 documents that plaintiffs cite really has anything of relevance  
22 to say about these documents. Plaintiffs cite, if your Honor  
23 turns to page -- it's numbered page 12 of Exhibit 29.

24 THE COURT: Hang on a minute.

25 MR. RADINE: Is this the original?



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1 MR. ARONOFF: Yes. This is the original.

2 THE COURT: OK. I'm there.

3 MR. ARONOFF: So plaintiffs say that this intelligence  
4 review, first of all, says that these cables on WikiLeaks were  
5 derived from a State database. To say that something is  
6 derived from a database is not to say that it's identical.  
7 Much of modern English vocabulary is derived from French but  
8 that doesn't mean you can walk around in Paris speaking English  
9 and have people understand you.

10 The second point is that plaintiffs point to this  
11 line-by-line review. But the line-by-line review, particularly  
12 when read alongside of the very first paragraph of this  
13 document, it's clear that what the -- what's being discussed  
14 here is a line-by-line review of underlying government  
15 documents to address the question of: Suppose these things  
16 were released, what would the harm be to national security; not  
17 the question of line-by-line comparing WikiLeaks documents  
18 against any government document. So this document here does  
19 not suggest that the government has effectively come out and  
20 said: Yes, we've confirmed each line is the same and thereby  
21 operates as some kind of official disclosure.

22 I don't expect -- this document, I think, was released  
23 through FOIA. Given the government's efforts since the time of  
24 the WikiLeaks disclosures to make sure that it's not commenting  
25 on any particular document, it would be surprising if this FOIA

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1 release somehow effectively pulled the rug out from under the  
2 entire government.

3 And, similarly, the Chelsea Manning testimony, that's  
4 just the testimony of one felonious government employee. It's  
5 not an official disclosure.

6 I'd also note that those proceedings, the criminal  
7 proceedings were closed to the public in that case whenever  
8 classified information was going to be discussed specifically  
9 because the government wanted to make sure that there were no  
10 further harms to national security from the conduct of that  
11 prosecution.

12 The other point -- if I had a separate thought, it's  
13 vanished.

14 THE COURT: And you're so young compared to those of  
15 us who can't remember what we had for breakfast.

16 Let me hear -- I know plaintiff's counsel wanted to  
17 say a few additional things.

18 MR. RADINE: Sure. As your Honor and defense counsel  
19 noted, the principle underlying FOIA is not the purposes, of  
20 course, that the requester has in requesting the information  
21 but the disclosure that the government is encouraged to make.

22 I didn't want to overstate or let's say understate the  
23 usefulness of these documents to us, however. To the extent  
24 that we haven't used them is in part the stage of the trials  
25 we're at. We have used them in expert reports where they can

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1 apply their on expertise to the reliability of the document.

2 But the issue for us is definitely a real one.

3 But, again, the broader issue is the purpose of the  
4 statute. And, of course, WikiLeaks is not the only grounds  
5 we've given for releasing these documents. In part, it's also  
6 a declaration that doesn't give itself over to ready analysis  
7 or understanding especially given other information out in the  
8 field.

9 The documents from the trial are not, of course, just  
10 the IRTF report or Chelsea Manning's statements which are  
11 unclassified. We've not used any classified information here.  
12 And her conviction and sentencing is premised on the fact that  
13 this information was released to WikiLeaks. It's been the  
14 government's position in other filings, as included in our  
15 briefings that, for instance, hundreds of thousands of  
16 identifying codes of significant activity reports, also taken  
17 by Chelsea Manning, were, quote, identical.

18 And lastly, of course, this is on top of the other  
19 authentication evidence that we've presented. I think the  
20 larger takeaway is that both from an acknowledgment and  
21 authentication standpoint we know what this information says.  
22 Other countries have read it. I think at this point it's sort  
23 of beyond the stage of what is not anything but the public  
24 information.

25 So, just to sum up, State has referenced a few times

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1 in its briefs that it's, quote, not up to a private law firm to  
2 decide what information is reasonably likely to harm national  
3 security if released. We don't disagree with that. I think  
4 it's up to an Article III Court. And we'd respectfully ask you  
5 to look at some of these materials and see if the declarations  
6 provide enough information and whether adjustments, whether it  
7 be redacting names, or producing information from President  
8 Talabani, or so on can be made to help further that FOIA  
9 principle.

10 That's it from us, your Honor.

11 THE COURT: All right. Yes.

12 MR. ARONOFF: Sorry, your Honor. I just have two  
13 small points. I think what we're getting to is really the kind  
14 of -- the last question that the Court really must consider is  
15 suppose that the content of the redactions and the WikiLeaks  
16 versions of these documents, suppose it's the same, is there  
17 still any harm that would result. And on that point the second  
18 Stein declaration, paragraph 26, makes clear that just as in  
19 the Wilson case in which a letter on CIA letterhead signed by a  
20 CIA employee saying, "Yes, you were employed for these dates"  
21 has been published by Congress, the Second Circuit nonetheless  
22 recognized that there is a particular harm that comes when  
23 you're conducting something in secret and then you're forced to  
24 come forward and acknowledge it publicly.

25 In the Stein declaration, Mr. Stein explains that when

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1 there's unofficial information a foreign government doesn't  
2 need to respond by basically accusing the United States itself  
3 of lying. That is the only thing that could be left if there  
4 is an official statement from the United States that X  
5 conversation occurred, that someone said something in this  
6 particular way. And those harms, they come from just the  
7 acknowledgment itself.

8 This is what happens in leaks cases. There might be a  
9 New York Times article that says here are 20 unnamed sources  
10 who all said the same thing. But there's still value to the  
11 government in not having to come forward and either confirm or  
12 deny that information. And that's true whether it's  
13 intelligence information, or diplomatic information, or any  
14 other sort of -- or information about an ongoing criminal  
15 investigation. That principle applies across all sorts of  
16 domains of government. And I recognize, of course, that FOIA  
17 is a disclosure statute but it doesn't require the disclosure  
18 of information when that disclosure would harm national  
19 security.

20 And the very last point on the Chelsea Manning trial.  
21 I don't have the citation before me but there is the most  
22 recent appeal in that case which is from this year, the Armed  
23 Forces Court of Appeals decision notes that Chelsea Manning  
24 ultimately pled guilty only to releasing 75 State Department  
25 cables. And it notes that the larger file that contained

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1 250,000 files was corrupted. So I don't -- that's a published  
2 opinion. It's not classified. It's clear from that document  
3 that the prosecution of Chelsea Manning does not by itself show  
4 that these 250,000 cables are, each of them, line-by-line  
5 identical to any official government document.

6 THE COURT: All right.

7 MR. ARONOFF: Thank you.

8 THE COURT: Thank you very much.

9 MR. RADINE: Could I have one more comment?

10 THE COURT: Yes.

11 MR. RADINE: Last one, your Honor, I promise.

12 I would just say that the citation to Wilson as to the  
13 effect of officially acknowledging something versus not, we  
14 referenced earlier that that appears in the CIA intelligence  
15 context. But I'd also point out that Wilson said the CIA's job  
16 isn't done from identifying the harm generally which would be  
17 embarrassment of a foreign power retaliation. It then has to  
18 specifically apply it. And in the Stein declaration a single  
19 paragraph essentially apes the language from Wilson but adds  
20 diplomacy language rather than intelligence language. We'd  
21 have to go back and explain why specifically if Iraq were  
22 forced to confront the reality that Maliki once said a nice  
23 word about General Odierno, then the embarrassment would be too  
24 much and national security would be thus harmed. So it's a  
25 specific showing that's not been made here. I will not say

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1 anything more after that.

2 THE COURT: Very good. This has been a very helpful  
3 argument. I will take the matter sub judice. Get me the one  
4 item I asked you to get me certainly within a week and I  
5 will -- there's a lot here to review so I don't think I'll get  
6 you an opinion until January but I'm sure I'll get to it by  
7 January.

8 MR. RADINE: Thank you, Judge.

9 MR. ARONOFF: Thank you, your Honor.

10 (Adjourned)